IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 12722 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALIHARI COLD STORAGE & 5 - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR RC KAKKAD for Applicant(s) : 1 - 6.
Mr.U.R.Bhatt, A.P.P. for Respondent(s) : 1,
MR PS CHAMPANERI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 04/05/2007

ORAL JUDGMENT

1. Rule. Learned A.P.P. Mr.U.R.Bhatt waives service of rule on behalf of the respondent no.1 while

Mr.P.S.Champaneri waives service of rule on behalf of the respondent no.2.

2. This application under Section 482 of the Code of Criminal Procedure, 1973 is preferred by the petitioners nos.1 to 6 with a prayer to quash and set aside the order dated 26-10-2005 passed by the Judicial Magistrate, First Class, Veraval, in Criminal Case no.1100 of 2005 below Exh.1 produced at Annexure “A” to the petition or in the alternative to quash and set aside the impugned judgment and order dated 19-10-2006 passed in Criminal Revision Application no.9 of 2006 produced at Annexure “D” to the petition and the judgment and order passed by the learned Judicial Magistrate, First Class, Veraval, below Exh.6 against the petitioners in Criminal Case no.1100 of 2005 and by virtue of it allow the application Exh.6 preferred in Crimial Case no.1100 of 2005. The respondent no.2 herein-original complainant lodged the complaint in Criminal Case no.1100 of 2005 against the present petitioners-original accused for the alleged offences punishable under Section 138 of the Negotiable Instruments Act and the learned Magistrate after

verification issued summons. The present petitioners submitted an application Exh.6 dated 6-12-2005 for dropping the proceedings contending that their bank account was closed on 17-4-2007 and stop payment instruction was also issued to the bank through letter dated 17-7-1998. It was the case of the petitioners that one Chhagan Kanji Aagya wanted loan from the present petitioners-original accused, and therefore, on instructions from the accused no.6 , the accused no.2 issued two cheques bearing no. 5841202 for Rs.7,00,000/- and no.5841203 for Rs.6,00,000/-in the year 1998 to Chhagan Kanji Aagya in which only the amount was mentioned and no date or name was mentioned. It was further the case of the petitioners that later on, the accused themselves were in need of money, and since Chhagan Kanji Aagya had not utilised the said cheques, the petitioners vide registered A.D. Letter dated 16-7-1998 requested the said Chhagan Kanji Aagya to return those cheques but Chhagan Kanji had not acceded to their request, as a result of which the relations between the petitioners and the said Chhagan Kanji Aggya became strained. The petitioners, therefore, issued stop payment

instructions to the bank by letter dated 17-7-1998 in respect of the aforesaid two cheques issued to Chhagan Kanji Aggya as and when presented. In the said letter it was specifically stated that the said two cheques were issued to Chhagan Kanji Aagya and that the cheque bearing no.58441203 for Rs.6,00,000/- has been misused by the respondent no.2-herein-original complainant in the year 2005 against the petitioners-original accused. According to the petitioners, under these circumstances they have preferred application Exh.6 for dropping the proceedings which came to be partly allowed by the learned Judicial Magistrate, First Class, Veraval, by order dated 10-3-2006 by dropping the proceedings against the accused nos.3 and 5, and rejecting the application qua the accused nos.1, 2 and 6. The learned Magistrate also directed that the matter shall proceed further. Against the said order, the present petitioners preferred Criminal Revision Application no.9 of 2006 and the 3rd Additionals Sessions Judge, Veraval, before whom the matter came up, after hearing both the sides by his order dated 19-10-2006 allowed the Revision Application and while setting aside the order passed by the learned Chief Judicial

Magistrate, First Class below Exh.6 in Criminal Case no.1100/2005 directed the lower Court to proceed against all the accused and to decide the case on merits, giving rise to the present Criminal Miscellaneous Application.

3. Heard learned Counsel Mr.R.C.Kakkad for the petitioners, learned A.P.P. Mr. Bhatt for the respondent no.1-State and Mr. P.S.Champaneri for the respondent no.2.

4. Learned Counsel for the petitioners Mr. Kakkad has strenuously argued that from the documents it is crystal clear that the present petitioners had not issued cheque in favour of the respondent no.2-original complainant but the cheque was issued in favour of Chhagan Kanji Aagya. According to the learned Counsel, the respondent no.2 had illegally obtained the same from the said Chhagan and he had also misued one of the cheques, and therefore, the petitioners had also issued instructions of stop payment to the bank. The learned Counsel further stated that bank account of the petitioner no.1-firm was closed on 17-4-2004 while the cheque in question which was

issued in the year 1998 was presented for encashment in the year 2005 and in view of the fact that the respondent no.2 had already misused one of the cheques, in order to prevent abuse of the process of law, the petition is required to be allowed.

4.1 In support of his aforesaid submissions, Mr. Kakkad had relied on the decision rendered in the case of Urban Credit Co.op. Society v. State of Gujarat and Anr. Reported in 2003(2) G.L.H. 629 wherein it is held that requirement occurring in S.138 in words " any cheque drawn on an account maintained" not satisfied, therefore, no offence is committed. In my view the ratio of this decision cannot be made applicable to the facts of the case on hand because, in the instant case, the cheque in question has been dishonoured by the bank with the endorsment " insufficient funds" meaning thereby that the account was in operation on the date of presentation of the cheque and , in any way, the amount has remained unpaid.

5. Leanred Counsel Mr. Champaneri on the other hand submitted that considering the documents produced by

the petitioner, it is abdundantly clear that the contentions raised by the petitioner can be decided only after recording of evidence at the trial. The learned Counsel also submitted that penal provisions of Section 138 of the Negotiable Instruments Act would be applicable even if payment is stopped prior to the due date of the cheque, and hence, the petition deserves to be dismissed. This Court finds considerale force in the submissions canvassed by the learned Counsel Mr. Champaneri.

5.1 In support of his submission, the learned Counsel Mr. Champaneri has placed reliance on the decision rendered in the case of Goaplast(P)Ltd. v. Chico Ursula D'Souza $ Anr. reported in 2003 (2) G.L.R. 1629 wherein while referring the the decision in N.E.P.C. Micon Ltd. v. Magma Leasing Ltd., 1999(4) SCC 253, the Court held in paragraph 7 of the judgment that when the cheque is returned by a bank with an endorsement “account closed”, it would amount to returning the cheque unpaid because` the amount of money standing to the credit of that account is insufficient to honour the cheque ' as

envisaged in Sec.138 of the Act." This decision, in my view, is squarely applicable to the facts of the present case. Reference in this connection may also be had to the decision rendered in the case of Modi Cements Ltd. v. Kuchil Kumar Nandi, (1988 3 SCC 249: (1998 Cri.L.J. 1397Whrein the Apex Court held that even if the cheque is dishonoured because of `stop-payment' instructions to the bank, Sec.138 of the Act would get attracted.

6. This Court has gone through the entire documents on record including the complaint as well as the orders passed by the Courts below. It is an admitted fact that two cheques have been issued and the signature thereon has not been denied by the present petitioners. Once the signature is not denied, presumption can be drawn against the accused under Section 139 of the Negotiable Instruments Act,1881. The petitioners have clearly stated that blank cheques with only signatures have been issued. The question whether the petitioner has issued the cheques in favour of one Chhagan Kanji Aagya or the respondent no.2 as also whether the date and name were mentioned in the cheque or not is a disputed question of

fact. However, the fact remains that the cheques have been issued with signnatures thereon by the petitioner no.1- firm which was dishonoured with the endorsement " insufficient funds". This shows that the bank account of the petitioner firm was in operation on the date of presentation and that the amount has remained unpaid which would attract penal provisions under Section 138 of the N.I.Act.

7. It is well settled law that this Court in exercise of its inherent jurisdiction under Section 482 of the Code would not make any roving inquiry into the questions of fact and record any findings. It is the duty of the trial Court. The basic object of exercising the power is to prevent abuse of the process of the Court and for preventing miscarriage of justice and to secure the ends of justice. In the instant case, reading the complaint as a whole, the same discloses commission of offence. Truth or otherwise of the allgations made in the complaint or the evidence collected or the charge-sheet as the case may be cannot be gone into by this Court in exercise of its inherent jurisiction. The process of criminal proceedings once set in motion

has to end and culiminate in inquiry as termination of the proceedings at the initial stage would amount to killing of a still born child.

8. Viewed in the said background and having regard to the facts and circumstances and the nature of allegations levelled in the complaint, this Court is of the opinion that the petitioners have not made out any case whatsoever warranting inteference of this Court, at this stage, and therefore, it would not be appropriate for this Court to quash the complaint in Criminal Case no.1100 of 2005 in exercise of its inherent jurisdiction under Section 482 of the Code. The petition fails and the same is accordingly dismissed. Rule is discharged.

8.1 However, the learned Judicial Magistrate, First Class, Veraval ,shall dispose of the proceedings in Criminal Case no.1100 of 2005 without being incluenced bay any of the observationsmade in this order, as they are confined only for the purpose of disposal of this application.

(M.D.Shah,J.)

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